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5 **ATTORNEYS FOR Defendant**
6 **LEXINGTON INSURANCE COMPANY**

7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF NORTHERN CALIFORNIA**
10 **OAKLAND DIVISION**
11

12 AJMAL AKBAR, an individual doing
13 business as COMMUNITY ONE
14 FINANCIAL AND REAL ESTATE
SERVICES,

15 Plaintiff,

16 vs.

17 LEXINGTON INSURANCE COMPANY,
a Delaware corporation,

18 Defendants.
19 _____/

No. C07-04027 EMC

ANSWER TO COMPLAINT OF
DEFENDANT LEXINGTON
INSURANCE COMPANY

20 In response to plaintiff's complaint, defendant Lexington Insurance Company hereby admits,
21 denies and avers as follows:

22 **I. THE PARTIES**

23 1. Answering the allegations of paragraph 1 of the complaint, defendant lacks knowledge
24 or information sufficient to form a belief as to the truth of said allegations.

25 2. Answering the allegations of paragraph 2 of the complaint, defendant admits such
26 allegations.

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II. NATURE OF ACTION

3. Answering the allegations of paragraph 3 of the complaint, defendant denies generally and specifically said allegations.

III. JURISDICTION AND VENUE

4. Answering the allegations of paragraph 4 of the complaint, defendant admits that the court has diversity jurisdictions and that plaintiff alleges damages in excess of \$75,000.

5. Answering the allegations of paragraph 5 of the complaint, defendant admits said allegations.

IV. INTRADISRICT ASSIGNMENT

6. Answering the allegations of paragraph 6 of the complaint, defendant admits said allegations.

V. BACKGROUND ALLEGATIONS

7. Answering the allegations of paragraph 7 of the complaint, defendant lacks knowledge or information sufficient to form a belief as to the truth of said allegations.

8. Answering the allegations of paragraph 8 of the complaint, defendant lacks knowledge or information sufficient to form a belief as to the truth of said allegations.

9. Answering the allegations of paragraph 9 of the complaint, defendant lacks knowledge or information sufficient to form a belief as to the truth of said allegations.

10. Answering the allegations of paragraph 10 of the complaint, defendant admits said allegations.

11. Answering the allegations of paragraph 11 of the complaint, defendant lacks knowledge or information sufficient to form a belief as to the truth of said allegations.

12. Answering the allegations of paragraph 12 of the complaint, defendant denies generally and specifically said allegations.

13. Answering the allegations of paragraph 13 of the complaint, defendant denies generally and specifically said allegations.

14. Answering the allegations of paragraph 14 of the complaint, defendant denies generally and specifically said allegations.

1 15. Answering the allegations of paragraph 15 of the complaint, defendant denies generally
2 and specifically said allegations.

3 16. Answering the allegations of paragraph 16 of the complaint, defendant denies generally
4 and specifically said allegations.

5 17. Answering the allegations of paragraph 17 of the complaint, defendant denies generally
6 and specifically said allegations.

7 18. Answering the allegations of paragraph 18 of the complaint, defendant denies generally
8 and specifically said allegations.

9 19. Answering the allegations of paragraph 19 of the complaint, defendant denies generally
10 and specifically said allegations.

11 20. Answering the allegations of paragraph 20 of the complaint, defendant denies generally
12 and specifically said allegations.

13 21. Answering the allegations of paragraph 21 of the complaint, defendant lacks knowledge
14 or information sufficient to form a belief as to the truth of said allegations.

15 **VI. FIRST CLAIM FOR RELIEF:**
16 **BREACH OF CONTRACT**

17 22. Answering the allegations of paragraph 22 of the complaint, which reallege and
18 incorporate by reference the allegations of paragraph 1 through 21 of the complaint, defendant
19 realleges and incorporates by reference its answers to said paragraphs.

20 23. Answering the allegations of paragraph 23 of the complaint, defendant denies generally
21 and specifically said allegations.

22 24. Answering the allegations of paragraph 24 of the complaint, defendant lacks knowledge
23 or information sufficient to form a belief as to the truth of said allegations.

24 25. Answering the allegations of paragraph 25 of the complaint, defendant denies generally
25 and specifically said allegations.

26 26. Answering the allegations of paragraph 26 of the complaint, defendant denies generally
27 and specifically said allegations.

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1 27. Answering the allegations of paragraph 27 of the complaint, defendant denies generally
2 and specifically said allegations.

3 **VII. SECOND CLAIM FOR RELIEF:**
4 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

5 28. Answering the allegations of paragraph 28 of the complaint, which reallege and
6 incorporate by reference the allegations of paragraph 1 through 27 of the complaint, defendant
7 realleges and incorporates by reference its answers to said paragraphs.

8 29. Answering the allegations of paragraph 29 of the complaint, defendant denies generally
9 and specifically said allegations.

10 30. Answering the allegations of paragraph 30 of the complaint, defendant denies generally
11 and specifically said allegations.

12 31. Answering the allegations of paragraph 31 of the complaint, defendant denies generally
13 and specifically said allegations.

14 32. Answering the allegations of paragraph 32 of the complaint, defendant denies generally
15 and specifically said allegations.

16 33. Answering the allegations of paragraph 33 of the complaint, defendant denies generally
17 and specifically said allegations.

18 34. Answering the allegations of paragraph 34 of the complaint, defendant denies generally
19 and specifically said allegations.

20 35. Answering the allegations of paragraph 35 of the complaint, defendant denies generally
21 and specifically said allegations.

22 36. Answering the allegations of paragraph 36 of the complaint, defendant denies generally
23 and specifically said allegations.

24 37. Answering the allegations of paragraph 37 of the complaint, defendant denies generally
25 and specifically said allegations.

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**VIII. THIRD CLAIM FOR RELIEF:
UNFAIR BUSINESS PRACTICES PURSUANT TO CALIFORNIA BUSINESS
AND PROFESSIONS CODE SECTION 17200 ET SEQ.**

38. Answering the allegations of paragraph 38 of the complaint, which reallege and incorporate by reference the allegations of paragraph 1 through 37 of the complaint, defendant realleges and incorporates by reference its answers to said paragraphs.

39. Answering the allegations of paragraph 39 of the complaint, defendant denies generally and specifically said allegations.

40. Answering the allegations of paragraph 40 of the complaint, defendant denies generally and specifically said allegations.

41. Answering the allegations of paragraph 41 of the complaint, defendant denies generally and specifically said allegations.

AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering defendant alleges that said complaint, and each cause of action thereof, fails to state facts sufficient to constitute a cause of action against this defendant.

AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering defendant alleges that said complaint, and each cause of action thereof, fails to state facts sufficient to constitute a claim for punitive damages against this defendant.

AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering defendant alleges that said complaint, and each cause of action thereof, is barred by the doctrines of waiver and estoppel.

AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering defendant alleges that plaintiff's complaint, and each cause of action thereof, is barred to the extent plaintiff has failed to perform all of his obligations, conditions and duties, precedent and subsequent, if any, under the policy of insurance issued by or through this defendant as identified in plaintiff's complaint.

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1 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
2 FILE HEREIN, this answering defendant alleges that plaintiff's complaint, and each cause of action
3 thereof, is barred, in whole or in part, by the exclusions, definitions, policy provisions, endorsements
4 and other terms and conditions contained in the policy of insurance issued by or through this
5 defendant as identified in plaintiff's complaint.

6 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
7 FILE HEREIN, this answering defendant alleges that defendant's policy of insurance did not cover
8 amounts paid or incurred by plaintiff voluntarily and/or without the consent of and prior notice of
9 that claim and litigation to defendant.

10 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
11 ON FILE HEREIN, this answering defendant alleges that it was justified and legally excused in and
12 about the matters alleged in the complaint, thus barring plaintiff from any recovery or entitlement
13 to equitable remedies.

14 WHEREFORE, defendant prays that plaintiff take nothing against said defendant by his said
15 complaint, that defendant have judgment for its costs of suit herein incurred, together with such
16 other and further relief as may be just and proper.

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18 Dated: January 3, 2008

CODDINGTON, HICKS & DANFORTH

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20 /s/

21 By: _____

22 Randolph S. Hicks
23 Attorneys for Defendant
24 Lexington Insurance Company
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